

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-HL-073
Trade Center Management, Inc.)	
Licensee of AM Station KHRA)	NAL/Acct. No. 200332860001
Honolulu, Hawaii)	
)	FRN 0006351688
)	

FORFEITURE ORDER

Adopted: April 5, 2004

Released: April 7, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000), to Trade Center Management, Inc. ("Trade Center"), licensee of Station KHRA, Honolulu, Hawaii, for willful and repeated violation of Section 73.3526(b) of the Commission's Rules ("Rules").¹ The noted violation involves Trade Center's failure to maintain the Station KHRA's public inspection file at the main studio.

2. On October 31, 2002, the Commission's Honolulu, Hawaii, Resident Agent Office ("Honolulu Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL")² in the amount of ten thousand dollars (\$10,000) to Trade Center. Trade Center filed a response on November 27, 2002.

II. BACKGROUND

3. On August 2, 2002, Commission agents from the Honolulu Office inspected KHRA and its main studio. The agents found that there was no public inspection file available at the main studio. KHRA's General Manager stated that there was no public inspection file maintained at the main studio.

¹ 47 C.F.R. § 73.3526(b).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332860001 (Enf. Bur., Honolulu Office, released October 31, 2002).

4. On October 31, 2002, the Honolulu Office issued a *NAL* for violation of Section 73.3526(b) of the Rules. On November 27, 2002, Trade Center submitted a response to the *NAL*. In that response, Trade Center seeks cancellation of the proposed forfeiture. Trade Center asserts that it misunderstood the public inspection file requirement, believing that it was required to maintain a “technical” file at its transmitter site. Trade Center also asserts that most of the documents required to be kept in the public inspection file were in a cabinet at the main studio, that no one had ever asked for KHRA’s public inspection file and that no one was ever denied access to any document required to be kept in the public inspection file. In addition, Trade Center states that it now has a public inspection file available at the main studio and that it has good record of compliance with FCC requirements. In addition, Trade Center argues that it relied on the advice of its engineer.

III. DISCUSSION

5. The proposed forfeiture amount in this case is being assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). In examining Trade Center’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

6. Section 73.3526(b) of the Rules requires commercial broadcast stations to maintain a public inspection file at the main studio of the station. It is undisputed that there was no public file available during the agents’ inspection of KHRA’s main studio on August 2, 2002, or prior to that date. Trade Center made a conscious decision to have a “technical” file available at its transmitter site but not at the main studio. We find that Trade Center’s violation of Section 73.3526(b) of the Rules was willful⁶ and repeated.⁷

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

7. Trade Center's apparent misunderstanding of the public file rule does not mitigate its violations. Licensees are responsible for knowing and observing the rules affecting their activities.⁸

8. Even if most of the documents required to be kept in the public inspection file were in a cabinet at the main studio, this fact would not be the basis for a "good faith" reduction of the proposed forfeiture because Trade Center did not make those documents available to the FCC agent when he requested the public file.

9. Even if no actual harm resulted from Trade Center's violation, there was a significant risk of harm because the public inspection file would not have been available if a member of the public requested it.⁹ We find that the violations are not mitigated by any lack of harm.

10. No mitigation is warranted on the basis of Trade Center's correction of the violation. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."¹⁰

11. Trade Center argues that it was relying on the advice of its engineer that it was not in violation of the FCC's requirements. "[T]he Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors and has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."¹¹

12. We do, however, find that Trade Center has a history of overall compliance and, accordingly, reduce the forfeiture amount to \$8,000.

13. We have examined Trade Center's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement* as well. As a result of our review, we conclude that Trade Center willfully and repeatedly violated Section 73.3526(b) of the Rules and find that, although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$8,000 is appropriate.

⁸ See, e.g. *In the Matter of Rego, Inc.*, 16 FCC Rcd 16795, 1697 (Enf. Bur. 2001).

⁹ In the *Forfeiture Policy Statement*, the Commission found that the omission of even a single item (the issues/programs list) from the public inspection file is a serious violation because it "diminishes the public's ability to determine and comment on whether the station is serving the community." *Forfeiture Policy Statement* at 17104-05, para. 39.

¹⁰ See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

¹¹ *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) (internal quotation marks omitted) and cases cited therein.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹² Trade Center Management, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for willfully and repeatedly violating Section 73.3526(b) of the Rules.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹³ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200332860001, and FRN0006351688. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

16. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Trade Center's counsel, John Crigler, Esq., Garvey Schubert Barer, 1000 Potomac Street, N.W., Washington, D.C. 2007-3501.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.